

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 744/88

~~Transfer Application No~~

DATE OF DECISION: 9.6.94

M.I. Kureshi

Petitioner

Mr. I.J. Naik

Advocate for the Petitioners

Versus

Union of India & 4 ors.

Respondent

Mr. Rao for Mr. R.M. Agarwal

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri M.R. Kolhatkar, Member (A)

- KCT
1. To be referred to the Reporter or not ? *W*
 2. Whether it needs to be circulated to other Benches of the Tribunal ? *W*

[Signature]
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. NO. 744/88

M.I. KURESHI

..APPLICANT

V/s

Union of India & 4 ors.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, Vice Chairman
Hon. Shri M.R. Kolhatkar, Member (A)

Appearance:

Mr. I.J. Naik
Counsel for the applicant

Mr. Rao for Mr. R.M. Agarwal
Counsel for the respondents

ORAL JUDGMENT:
(Per: M.S. Deshpande, Vice Chairman)

DATED: 9.6.1994

The only question which arises in this case is whether the respondents were justified in terminating the employment of the applicant by an innocuous order on 6th October 1987. The applicant was appointed in December 1977 as stockman and on 7.8.86 a chargesheet was issued to him for continued absence and misconduct in that he threatened his superior with physical injury. An Inquiry Officer was appointed on 10.10.1986. The inquiry was held on three dates i.e., 27.3.87, 9.4.87 and 13.10.87. However, before the conclusion of the departmental inquiry, the services of the applicant came to be terminated with apparently^{b7} an innocuous order which purported to show that it was termination simplicitor. The applicant preferred a statutory appeal in November 1987 and the same was rejected on 26.2.88. He approached the Principal Bench of the Tribunal at New Delhi on 23.7.88 and the present O.A. came to be transferred to this Bench of the Tribunal.

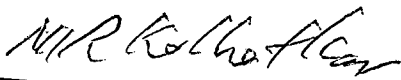
2. The only contention which was raised on behalf of the applicant was that the applicant was not terminated by an innocuous order and it could not be

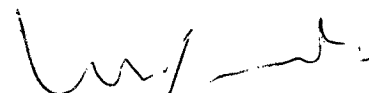
termed as a termination simplicitor because inquiry was being held into the alleged misconduct of the applicant. The position of law as laid down in STATE OF UTTAR PRADESH & ANR. V. KAUSHAL KISHORE SHUKLA, 1991(1) SCC(L&S) 587, is that though a temporary Government servant has no right to the post, that was a case where a preliminary inquiry was held into the conduct of the applicant therein and his services came to be terminated. The present one was not a case of preliminary inquiry but a regular departmental proceedings. Even before the conclusion of the departmental proceedings the order of termination was passed without dropping the inquiry proceedings. In the present case, therefore, it cannot be said that the respondents were justified on the basis that the terms of contract provided for termination in such circumstances.

3. The reply filed by the respondents shows that the respondents were motivated into terminating the services of the applicant on account of his previous performance. The order passed by the respondents terminating the services cannot therefore be upheld. Extending the principle as laid down in MANAGING DIRECTOR, E.C.I.L, HYDERABAD ETC., Vs. B. KARUNAKAR, ETC., AIR 1994 SC 1074, we direct the respondents to treat the applicant as having been reinstated for the purpose of completing the inquiry initiated against him. The applicant will be entitled to Subsistence Allowance from 6.10.1987 i.e., the date of termination till the date of completion of the inquiry initiated against him. The entire amount of arrears of Subsistence

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Allowance shall be paid to the applicant within four months from the date of receipt of a copy of this order. Liberty to the respondents to ^{revive}~~reviewing~~ the inquiry against the applicant. The question of backwages shall be considered and decided by the respondents at the conclusion of the inquiry. No order as to costs.


(M.R. Kolhatkar)
Member(A)


(M.S. Deshpande)
Vice Chairman